

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Linden VFT, LLC

Docket No. ER07-543-000

ORDER AUTHORIZING NEGOTIATED RATES

(April 19, 2007)

1. Linden VFT, LLC (Linden) requests authority under section 205 of the Federal Power Act¹ to sell transmission rights at negotiated rates from its proposed merchant transmission project. Linden's merchant transmission project differs from the merchant transmission projects previously addressed by the Commission in that, as a part of its project, Linden proposes to increase the capacity on an existing transmission line and to charge negotiated rates for the incremental capacity. In this order, the Commission authorizes Linden to charge negotiated rates under its merchant transmission proposal. In addition, the order accepts Linden's "Report on Open Season" for its auction of transmission scheduling rights (TSRs).

Proposal

2. Linden is a new Delaware limited liability company that was formed for the proposed merchant transmission project. It will be 15 percent owned by East Coast Power, L.L.C. (East Coast Power) and 85 percent owned by Aircraft Services Corporation (ASC).² ASC is an indirect, wholly-owned subsidiary of General Electric Capital Corporation (GECC). Linden is affiliated with Cogen Technologies Linden

¹ 16 U.S.C. § 824d (2000).

² ASC is the manager of EFS Cogen Holdings, L.L.C. (EFS), a Delaware limited liability company, which owns 99 percent of East Coast Power. EFS is wholly-owned by General Electric Credit Corporation of Tennessee, which is wholly-owned by GECC.

Venture, L.P. (Linden Venture) and Cogen Technologies Linden Venture, L.P. (Linden Holding).³

3. On February 14, 2007, Linden filed a merchant transmission proposal which would increase transmission capacity on existing AC transmission facilities by 300 MW. The existing transmission facilities are owned by two of Linden's affiliates and were constructed as part of a qualifying cogeneration facility (QF) plant under the Public Utility Regulatory Policies Act of 1978.⁴ Linden states that it expects to have the project in place in 2009. Linden's project also will include 1000 feet of new 345 kV transmission line with a capacity of 300 MW connecting PJM Interconnection, L.L.C. (PJM) and the New York Independent System Operator, Inc. (NYISO).

4. More specifically, Linden states that its project will consist of less than 1000 feet of new transmission line and a new variable frequency transformer (VFT) system and that the project will be built adjacent to the existing QF plant in New Jersey. The new 345 kV transmission line, which will have a capacity of 300 MW, will connect an existing 230 kV PJM transmission line that bisects the property of the QF plant, to Linden's 8,500-foot underground 345 kV oil-filled pipe-type cable that connects the QF plant to Consolidated Edison Company of New York, Inc.'s (ConEd) Goethals substation, located in Staten Island, New York. Under Linden's proposal, the existing transmission capacity of the 345 kV cable will also be increased by 300 MW by adding a radiator to the system for circulating dielectric fluid through the annular space surrounding the cables.

5. The existing QF plant is owned by Linden's affiliates, Linden Venture and Linden Holding. As part of the VFT project, Linden states that it will execute a "Shared Facilities and Coordinated Transmission Agreement and Indemnity" with Linden

³ Cogen Technologies Linden, Ltd. is an indirect subsidiary of East Coast Power, which owns approximately 70 percent general partnership interest in Linden Venture, a Delaware limited partnership. The other 30 percent is owned by State Street Bank and Trust Company of Connecticut, N.A., which acts in its capacity as trustee of an owner trust on behalf of the beneficial owner, Linden Owner Partnership, a Delaware general partnership. The partners of Linden Owner Partnership are three special purpose entities that are wholly owned by GECC. Linden Holding is a Delaware limited liability company and a direct, wholly-owned subsidiary of East Coast Power. Both Linden Venture and Linden Holding are affiliates of GECC and General Electric Company.

⁴ 16 U.S.C.A. § 824a-3 (West Supp. 2006).

Venture. This agreement provides that the incremental transmission capacity created by the instant proposal will be used for merchant transmission purposes.⁵

6. Linden states that the proposed VFT project is a fully controllable AC transmission line that would help further integrate the wholesale power markets operated by PJM in New Jersey with the wholesale power market operated by NYISO in New York City. Linden states that its proposed VFT project provides an innovative solution in an area with transmission bottle-necks and that it is based, in part, on advanced technology developed by GE Energy. Linden asserts that its project offers a unique way to alleviate grid congestion by increasing the capacity of existing transmission in an area where new transmission corridors are difficult to obtain and that it is a simpler way to control power between two electrical grids than previously available.

7. Linden points out that its VFT project expands transmission capacity in an area designated by the United States Department of Energy (DOE) as a “Critical Congestion Area,” *i.e.*, “an area that is critically important to remedy existing or growing congestion problems because the current and/or projected effects of the congestion are severe.”⁶ Linden also asserts that the DOE has stated that the Atlantic Coastal area from metropolitan New York southward “requires billions of dollars of investment in new transmission, generation, and demand-side resources over the next decade to protect grid reliability and ensure the area's economic vitality.”⁷ Moreover, Linden adds that the VFT project addresses the constraint between PJM and New York City.

8. Linden also notes that the DOE Study recognized that new transmission lines frequently need to go through communities “that may oppose the construction of new

⁵ In a filing made concurrently with the instant filing, Linden Venture and Linden Holding requested that the Commission recertify the QF project as a QF under PURPA notwithstanding Linden’s use of the incremental transmission capacity on an existing QF line for the VFT project. In a delegated letter order issued April 5, 2007, Linden’s cogeneration facility was found to satisfy the technical requirements for QF status. The letter order also found that, should the 345 kV transmission line no longer be included as part of the QF facility, any sales of transmission rights on that 345 kV line would not have any effect on the status of Linden’s cogeneration units as a QF, and the cogeneration units would continue to meet the requirements of 18 C.F.R. § 292.101(b)(1) (2006). *Cogen Technologies Linden Venture, L.P. and East Coast Power Linden Holding, L.L.P.*, 119 FERC ¶ 62,015 (2007).

⁶ Linden Transmittal letter at 3-5, *citing* Department of Energy’s “National Electric Transmission Congestion Study,” at viii, 39 (August 8, 2006) (DOE Study).

⁷ *Id.* at 41.

overhead high-voltage power lines, while utilities and their customers oppose incurring high costs to make such lines less intrusive aesthetically by putting them underground.”⁸ Linden asserts that the instant project utilizes existing rights of way that did not result from the use of eminent domain and, therefore, avoids the siting issues that frequently obstruct such projects.

9. Linden explains that on January 16, 2007, it held an open season for twelve 25-megawatt blocks of TSRs, which include all associated rights for withdrawing energy and generation capacity from PJM and delivering it into NYISO. Prices for the three-, five-, and seven-year contract lengths were set based on the auction results. Four power marketing and trading companies that are unaffiliated with Linden won the auction.

Notices and Responsive Pleadings

10. Notice of Linden’s filing was published in the Federal Register, 72 Fed. Reg., 8376 (2007), with interventions and protests due on or before March 7, 2007. NYISO filed a timely motion to intervene. The New York State Public Service Commission (New York Commission) filed a timely notice of intervention. On March 14, 2007, the NRG Companies⁹ filed a motion to intervene out of time.

11. ConEd filed a timely motion to intervene and styled its comments as a request for clarification. First, ConEd requests that the Commission find that the interconnection of the VFT project to the New York transmission system be formalized through an interconnection agreement. Second, ConEd requests that the scope of the capacity encompassed by the negotiated rate authorization be clearly specified. Third, ConEd requests that the Commission clarify that Linden (or the customers to whom it sells capacity) will be responsible for the cost of any deliverability enhancements that are required for participation in the NYISO capacity markets.

12. On March 9, 2007, Linden filed an answer to ConEd’s comments. Linden contends that the matters raised by ConEd are outside the scope of this proceeding and should be addressed in other on-going proceedings. On March 22, 2007, NYISO filed an answer to ConEd’s comments which addressed ConEd’s concerns on interconnection and deliverability enhancement issues.

⁸ *Id.* at 43.

⁹ The NRG Companies are: NRG Power Marketing, Inc., Arthur Kill Power LLC, Astoria Gas Turbine Power LLC, Dunkirk Power LLC, Huntley Power, LLC, and Oswego Harbor Power LLC.

Discussion

A. Procedural

13. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.214 (2006)), all timely filed motions to intervene and any motions to intervene out-of-time filed before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties.

14. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2006), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We accept the answers submitted by Linden and NYISO because these submittals have provided information to assist us in our decision-making process.

B. Analysis of Filing

15. The Commission will authorize Linden to charge negotiated rates under its merchant transmission proposal. As discussed below, we find that it meets the criteria the Commission requires for merchant transmission projects and that by upgrading its existing facilities using innovative technology, the instant VFT project will further integrate the PJM and NYISO systems with minimal environmental impact.

16. The Commission has developed 10 criteria to evaluate proposals to charge negotiated rates for transmission rights over new transmission facilities.¹⁰ These 10 criteria state that: (1) the merchant transmission facility must assume full market risk; (2) the service should be provided under the open access transmission tariff (OATT) of the Independent System Operator (ISO) or Regional Transmission Organization (RTO) that operates the merchant transmission facility and that operational control be given to that ISO or RTO; (3) the merchant transmission facility should create tradable firm secondary transmission rights; (4) an open-season process should be employed to initially allocate transmission rights; (5) the results of the open season should be posted on the Open Access Same-Time Information System (OASIS) and filed in a report to the Commission; (6) affiliate concerns should be adequately addressed; (7) the merchant transmission facility should not preclude access to essential facilities by competitors; (8) the merchant transmission facilities should be subject to market monitoring for market power abuse; (9) physical energy flows on merchant transmission facilities should be coordinated with, and subject to, reliability requirements of the relevant ISO or RTO; and

¹⁰ See *Northeast Utilities Service Co.*, 97 FERC ¶ 61,026 (2001); *Northeast Utilities Service Co.*, 98 FERC ¶ 61,310 (2002).

(10) merchant transmission facilities should not impair pre-existing property rights to use the transmission grids of interconnected RTOs or utilities. Linden states that it has set forth in its proposal how the VFT project meets each of the 10 criteria established to evaluate merchant transmission projects. As set forth below, the Commission will evaluate Linden's proposal by each of the criterion.

1. Assumption of Market Risk

17. The first criterion sets forth that the merchant transmission facility should assume full market risk. In its application, Linden states that all project costs, fixed and operating, will be recovered from the revenues derived from voluntary sales of Linden's TSRs at negotiated rates. In addition, Linden states that parties that do not use the VFT project will not pay any portion of the costs associated with the merchant transmission project. Further, Linden contends that there is no potential for cross-subsidization of market risk as neither it nor its affiliates have any captive customers. Finally, Linden states that it will keep separate books for all of its affiliates and that its books will comply with Part 101 of the Commission's Regulations under the Uniform System of Accounts and also be subject to examination under Part 41 of the Commission's regulations, consistent with the guidelines established by the Commission. We find that Linden's commitment to assume all the financial risk for the VFT project adequately satisfies this criterion.

2. Open Access Transmission Tariff

18. The second criterion states that service should be provided under the OATT of the ISO or RTO that operates the merchant transmission facilities, and that control of the facilities should be given to that ISO or RTO. Linden states that transmission service on the VFT project will be provided under the merchant transmission provisions of PJM's OATT.¹¹ Further, Linden contends that PJM will have operational control over the VFT project. The Commission finds that Linden's proposal satisfies this criterion.

3. Secondary Transmission Rights

19. The third criterion states that the merchant transmission facility should create tradable firm secondary transmission rights and these rights should be posted on OASIS.

¹¹ On March 12, 2003, the Commission accepted tariff sheets to modify PJM's tariff to include provisions for merchant transmission facilities. *PJM Interconnection, L.L.C.*, 102 FERC ¶ 61,277 (2003).

Linden states that it made the full capacity of the VFT project available in an open season that concluded on January 16, 2007. Linden states that the purchasers of TSRs will be able to post such rights on PJM's OASIS and trade such rights in secondary markets pursuant to PJM's OATT. Thus, this criterion is satisfied.

4. Open Season

20. The fourth criterion states that an open-season process should be employed to initially allocate transmission rights. Linden states that it held an open-season process for the initial allocation of transmission rights. First, Linden states that it published a start date and end date of the open-season period. Second, Linden states that it invited any party to submit a bid for TSRs over the VFT project. Third, Linden asserts that it made available all non-price terms and conditions during the open-season process. Linden states that all of the non-price terms and conditions for TSRs were contained in a single document, the TSR Agreement, and were available to bidders on the information web site. Fourth, Linden states that it kept all bids sealed until the defined bid deadline at the close of each round of the open-season auction and then opened all bids concurrently. Finally, Linden states that it reviewed the bids and ranked them using bid price and term of the bid.

21. As part of the open-season process, Linden states that it published and used an indifference curve as the exclusive criterion in establishing the winning bids. Linden states that prior to the start of the auction, a reserve level based on the net present value of aggregate contract revenues for various bid prices and terms was developed. At the conclusion of the sealed bid round of the auction, the bids were stacked by the three-year equivalent price (as determined by the price indifference table) in accordance with the published bidding rules. If the aggregate value of the auction closing bids exceeded the reserve limit, those bids would be winning bids. Linden states that this process provided an objective standard to review and accept bids in the open season. Linden further states that the non-price terms and conditions in the open-season auction, which were contained in the TSR Agreement, were identical for all bidders. Thus, Linden notes that its open-season process enabled unsuccessful bidders to determine if they were treated in a fair manner.

22. Linden anticipates that future open seasons will be conducted in a similar manner or as may be appropriate under the circumstances. To the extent that Linden plans any material changes to the way it conducts future open seasons, it states that it will post this information on its website and separately file a report with the Commission to inform the Commission of such changes. On a prospective basis, Linden commits to holding subsequent open seasons that conform with the Commission's requirements at the time of the open season.

23. The Commission finds that Linden's open season was transparent, non-discriminatory and fair and therefore adequately satisfies this criterion.

5. Report on Open Season

24. The fifth criterion requires that the results of the open season be posted on OASIS and filed in a report to the Commission. Linden states that information about the winning bids from its open season was posted on its information website on January 23, 2007. Further, as part of its filing in this proceeding, Linden submitted its "Report on Open Season." Linden further states that it will file an open-season report in this proceeding for each future open season.

25. Linden's report explains that the open season was held between October 16, 2006 and January 16, 2007. It further states that it sold all 300 MWs of TSRs over the VFT project in an auction held on January 16, 2007. Linden states that six parties bid for the capacity of the VFT project, which was auctioned in blocks of 25 MW for terms of three, five or seven years. In addition, Linden states that four parties submitted winning bids, thereby allowing the development of the VFT project to continue. Finally, Linden states that to independently administer the auction, it engaged CRA International, Inc. (CRA), an economics, finance and business firm with experience in conducting electricity auctions.

26. CRA states in a letter attached to the report that throughout the open-season process, it was able to verify that reasonable efforts were taken to ensure that potential bidders had access to the same information concerning the TSR product. It further states that it conducted the auction and bidding process in accordance with the bidding rules and procedures designed to give each qualified participant an equal and fair opportunity to compete for TSRs. Finally, CRA states that it did not find anything to suggest that the open-season process was not appropriate, fair, open and non-discriminatory.

27. The Commission finds that Linden's open-season report satisfies the fifth criterion. Further, as requested by Linden, the Commission accepts the "Report on Open Season."

6. Affiliate Concerns

28. The sixth criterion is that affiliate concerns must be adequately addressed. As noted earlier, General Electric Capital Corporation is an indirect owner of Linden, and Linden Venture and Linden Holding own the existing transmission line which will be upgraded to accommodate the VFT project. These companies (Linden Venture and Linden Holding) have authorization from the Commission to make sales of energy at

market-based rates.¹² Linden contends that these affiliations raise no cross-subsidization concerns because Linden and its affiliates have no captive customers. Moreover, Linden notes that although its affiliates could have bid in the open season, none did. Thus, Linden states that there is no potential for affiliate cross-subsidies or abuse. Finally, Linden states that it will maintain its own separate books of account and records in accordance with the Commission's regulations and will make these books and records available to the Commission for inspection. Based on these representations, we find that Linden's proposal satisfies this criterion.

7. Access to Essential Facilities

29. The seventh criterion is that the merchant transmission project does not preclude access to essential facilities by competitors. Linden states that it will not rely on eminent domain authority for the VFT project. Rather, Linden states that the VFT project will rely on pre-existing contractual arrangements that were entered into voluntarily. Linden explains that because these arrangements had already existed for many years, and the limited amount of new construction will be sited within an industrial complex adjacent to an existing power plant, there were no siting issues involved in the VFT project. Linden states that it did not need to obtain any additional transmission line easements, but rather it will use existing rights of way for the instant project. Linden states that the VFT project does not give it the ability to preclude competitors. Although it will rely on certain existing rights held by an affiliated QF, Linden states that it does not own or control any of the possible sites for transmission. Moreover, Linden notes that PJM and the NYISO have standardized interconnection procedures that are open and non-discriminatory.¹³ Finally, Linden states that its competitors may freely pursue projects similar to, and in competition with, the VFT project. Based upon these representations, the Commission finds that Linden satisfies this criterion.

8. Market Monitoring

30. The eighth criterion is that merchant transmission facilities should be subject to market monitoring for market power abuse and all data requests from an authorized market monitor should be answered. Linden notes that PJM has a fully functioning market monitoring unit. In addition, Linden notes that it cannot restrict capacity because the VFT project will be a fully controllable AC line and PJM will have operational and scheduling control of the project. Therefore, Linden states that it will not be possible for

¹² Director Letter Order issued June 21, 2006 in Docket Nos. ER06-738-000 and ER06-739-000 (unpublished).

¹³ See PJM OATT, Subpart E of Part; Attachment X of the NYISO OATT.

Linden to engage in physical or economic withholding of the capacity of the line. Based on the above, the Commission finds that Linden satisfies this criterion.

9. Reliability Requirements

31. The ninth requirement is that physical energy flows on merchant transmission facilities should be coordinated with, and subject to, the reliability requirements of the relevant ISO or RTO. Linden states that no customer of the VFT project will be directly connected to the project. Because the Linden line will be a fully controllable AC line and completely integrated with the PJM transmission system, there will be no physical control by any entity other than PJM. PJM will effectively control physical flow through its dispatch of all generation on the PJM transmission system and through its scheduling of the controllable energy flows over the project. Accordingly, Linden's proposal satisfies this criterion.

10. Pre-existing Property Rights

32. The last criterion is that transmission facilities should not impair pre-existing property rights to use the transmission grid of interconnected ISOs, RTOs or utilities. Linden explains that the transmission capacity that will be used as part of the VFT project is incremental transmission capacity that will not be used for the QF plant. Linden further explains that the Shared Facilities Agreement between Linden and Linden Venture recognizes this preexisting right.¹⁴ Thus, Linden contends that under the provision of PJM's OATT, the VFT project will create only incremental transmission rights and will not impair pre-existing transmission rights. Specifically, Linden states that the Shared Facilities Agreement establishes that Linden Venture has first priority to use all of the capacity in the 345 kV transmission line necessary for Linden Venture to fulfill its obligations to deliver energy to ConEd.¹⁵ Therefore, under the instant proposal, Linden Venture has first priority for the use of the 345 kV line and, in the event of a curtailment, Linden Venture will be the last to be curtailed. The Commission thus finds that Linden satisfies this criterion.

¹⁴ Linden Transmittal Letter at 19.

¹⁵ Linden Answer at 3.

C. **Additional Issues**

1. **Interconnection Agreement for New York End of VFT Project**

33. ConEd states that Linden's filing does not address the interconnection of the VFT project to the New York transmission system. ConEd asserts that the VFT project will use the 345 kV lines which are governed by a 1989 Power Purchase Agreement (PPA) between ConEd and Linden Venture. ConEd further asserts that the PPA specifies arrangements for metering and coordinating the operation and maintenance of the QF plant, the 345 kV lines and ConEd's transmission facilities. ConEd argues that given the "unusual circumstances of this case, in which the merchant transmission project will be accomplished through the use of existing and interconnected transmission lines," ConEd emphasizes that "care must be taken to formalize the project's interconnection in a way that avoids disruption of existing operations and arrangements."¹⁶ ConEd, therefore, requests that the Commission clarify that such an interconnection must be formalized through an interconnection agreement.

34. In its answer, Linden states that it plans to execute "such documents as are determined appropriate under NYISO's OATT" when the VFT project interconnection request is approved.¹⁷ Linden further states that whatever unusual circumstances are presented by the novel nature of Linden's use of existing transmission facilities for merchant transmission purposes can be addressed in the ongoing interconnection request evaluation being conducted by NYISO pursuant to NYISO's OATT. Thus, Linden contends that there is no necessity for the Commission to require a formal interconnection agreement before granting Linden the authority to charge negotiated rates for its merchant transmission project.

35. The Commission notes that as detailed in its application, Linden has submitted an interconnection application to NYISO and has been assigned Queue Position No. 125. Further, the tenth criterion for merchant transmission projects is that the proposed facilities should not impair pre-existing property rights to use the transmission grid of interconnected RTOs or utilities. This criterion, to which Linden has agreed, is intended

¹⁶ ConEd Motion at 4.

¹⁷ Linden Answer at 4.

to avoid the disruption of existing operations and arrangements. We expect that Linden will follow the procedures set forth in NYISO's OATT and that NYISO will complete the requisite applications and studies in a timely fashion.

2. Scope of Capacity on New York Portion of 345 kV Line

36. ConEd asserts that Linden indicates that its affiliate, Linden Venture, owns the full length of the 345 kV line to ConEd's Goethals substation. ConEd asserts that Linden Venture only owns the segment of the line from the QF facility to the New Jersey/New York boundary; the New York portion of the line is owned by ConEd. ConEd also argues that the creation of incremental capacity on transmission lines that ConEd owns does not render Linden and ConEd joint owners of the New York portion of the transmission lines. Rather, ConEd argues that any entitlement to the incremental capacity on the New York portion of the line created by the VFT project would be in the form of Transmission Congestion Contracts (TCCs). ConEd states that any TCCs created by the VFT project will be governed by the NYISO OATT. Finally, ConEd contends that there is ambiguity concerning the amount of capacity available under the VFT project. Although ConEd asserts that these issues "should not significantly alter the project," it nevertheless requests that the Commission clarify that the scope of the capacity encompassed by the negotiated rate authorization be limited to the capacity on facilities that are owned by Linden and Linden Venture.¹⁸

37. In its answer, Linden concurs with ConEd's description of the ownership of the New York segment of the 345 kV transmission line. Linden also agrees that the conditions for use of the New York portion of the line are specified in the PPA. Linden states that it is not seeking change in the ownership of the 345 kV line or changes to the PPA. Linden states that the Shared Facilities Agreement between Linden and Linden Venture creates no additional rights having an effect on third parties, including ConEd. Instead, Linden clarifies that the Shared Facilities Agreement establishes that Linden Venture has first priority to use all of the capacity in the 345 kV transmission line "necessary for Linden Venture to fulfill its obligations to deliver energy and capacity to ConEd under the PPA."¹⁹ Further, Linden explains that only after the first priority needs of Linden Venture are met, will the 300 MW of incremental capacity created by the VFT project be available for use. Since there is no dispute with respect to the underlying facts, Linden contends that there is no ambiguity.

¹⁸ ConEd Motion at 6.

¹⁹ Linden Answer at 3.

38. As the Commission views Linden's explanation, if curtailment is required on the existing 345 kV line, the needs of Linden Venture to meet its obligations will be met first, and only after such needs are met will capacity become available for Linden. Given this understanding, the Commission finds that ConEd's concerns on the scope of the VFT project were satisfactorily addressed by Linden.

3. Costs of Delivery Enhancements

39. ConEd asserts that consistent with Order No. 2003,²⁰ Linden, or the customers to whom it sells capacity, must be responsible for the cost of deliverability enhancements required for participation in the NYISO capacity markets. ConEd further argues that in Docket No. ER04-449-003, *et al.*, NYISO is in the process of developing capacity/network resource interconnection service (NRIS) pursuant to Commission orders addressing NYISO's compliance with Order No. 2003.²¹ ConEd requests that the approval of negotiated rates for Linden be conditioned on compliance by Linden and/or its customer with the NRIS requirement, as it is adopted by NYISO and approved by the Commission. ConEd states that such a condition is needed to prevent the interconnection of transmission and generation projects at locations that require unduly expensive transmission upgrades and to prevent the shifting of upgrade costs to other project developers or consumers.

40. In response to ConEd's concern regarding delivery enhancements, Linden states that it will be bound by the Commission's decision in the on-going proceedings in Docket No. ER04-449-003, *et al.* Since Linden states that it will be bound by the outcome of those proceedings, there is no need to condition the authorization for negotiated rates as requested by ConEd. Further, the Commission stated in the on-going proceedings in Docket No. ER04-449-003, *et al.* that it will not prejudge the outcome of the on-going NYISO NRIS proceedings.²² Consistent with the first criterion for merchant transmission projects, Linden will assume the full market risk associated with

²⁰ Standardization of Generator Interconnection Agreements and Procedures, Order No. 2003, FERC Stats. & Regs. ¶ 31,146 (2003), *order on reh'g*, Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160, *order on reh'g*, Order No. 2003-B, FERC Stats. & Regs. ¶ 31,171 (2004), *order on reh'g*, Order No. 2003-C, FERC Stats. & Regs. ¶ 31,190 (2005).

²¹ *New York Independent System Operator, Inc., et al.*, 108 FERC ¶ 61,159 (2004), *order on reh'g*, 111 FERC ¶ 61,347 (2005).

²² *New York Independent System Operator, Inc., et al.*, 111 FERC ¶ 61,347 at P 14 (2005), *citing New England Power Pool*, 109 FERC ¶ 61,155 at P 40-50 (2004).

the VFT project. This includes interconnection and transmission upgrade costs that are directly assigned or allocated to Linden in accordance with the PJM and NYISO OATTs.

D. Requests for Waivers and Blanket Approvals

41. Linden requests waiver of the requirements of subparts B and C of part 35 of the Commission's regulations, except for the requirements of sections 35.12(a), 35.13(b), 35.15, and 35.16. Linden asserts that because it is requesting authorization to provide transmission service under negotiated rates, the cost data requirements of subparts B and C of part 35, except for the requirements of sections 35.12(a), 35.13(b), 35.15, and 35.16, do not apply. Further, Linden asserts that once it becomes operational, it will submit electronic quarterly reports of transactions with the Commission.

42. Because Linden is proposing to charge negotiated rates, the regulations requiring the filing of cost-based data are not applicable. Therefore, for good cause shown and consistent with our findings for other merchant transmission proposals, we will waive the filings requirements of sections 35.12(a), 35.13(b), 35.15, and 35.16, except for the requirements of sections 35.12(a), 35.13(b), 35.15, and 35.16.²³

43. Further, Linden states that it does not expect to have the VFT project in service until 2009. However, in order to assist in financing, Linden requests waiver of the 60-day notice requirements in order that it might receive early approval of its negotiated rates and open-season report by March 31, 2007. The Commission denies the requested waiver and makes the requested authorization effective as of the date of this order. In the Commission's view, the instant order authorizing Linden's proposed negotiated rates and open-season report is sufficiently timely when compared to Linden's requested date for Commission action so as to not unduly disrupt Linden's financing efforts for its project.

44. Linden also requests waiver of part 141 of the Commission's regulations as it relates to the filing requirements for FERC Form No. 1, "Annual Report of Major Electric Utilities, Licensees and Others." In support of its request for waiver, Linden commits to keep its books pursuant to the Uniform System of Accounts and thus, will comply with Part 101 of the Commission's regulations. In addition, Linden asserts that its books will be subject to examination by the Commission pursuant to part 41 of the Commission's regulations. We grant Linden's request for waiver of the filing requirements relating to the Form 1. In analyzing Linden's request for waiver, the Commission weighed (1) the need for the Commission and the public to have access to the information contained in Form 1, and (2) developing policies which will promote

²³ See, e.g., *TransEnergie U.S. Ltd.*, 98 FERC ¶ 61,144, at 61,458 (2002).

competition.²⁴ For public utilities with cost-based rates, the information provided in Form 1 is necessary to ensure that rates are reasonable. However, Linden's rates will be negotiated rather than cost-based rates. Rather, like merchant generators with market-based rate authority, Linden will have no captive customers. Since the QF facilities were certified and built to deliver power to ConEd in New York City, there is no separate transmission charge for the use of the QF facilities. On balance, especially given that there is no immediate need for this information, the Commission will grant Linden's motion for waiver of the Form 1 filing requirement, for good cause shown.

E. Conclusion

45. In other orders authorizing negotiated rates for merchant transmission projects, we found that merchant transmission projects play a useful role in expanding competitive generation alternatives for customers and meeting reliability needs.²⁵ The VFT project is no exception. By upgrading its existing facilities using innovative technology, the VFT project will further integrate the PJM and NYISO systems with minimal environmental impact. By keeping separate accounting records for the Linden affiliates, the VFT project will not adversely impact the costs of any ratepayers, including those relying on the QF plant. Indeed, the increase in transmission capacity from the VFT project may increase competition and reduce costs for all ratepayers in the area.

46. Unlike the previous merchant transmission projects, the VFT project will create incremental capacity on an existing transmission line. However, on review of the instant proposal, the Commission finds that this proposal is the equivalent of other requests for authorization by the Commission for negotiated rates for new merchant transmission. First, the net result of the proposal is that 300 MW of capacity is created between the PJM and NYISO systems that did not previously exist. This is because the PJM system was not previously connected to Linden's 345 kV line which in turn is connected to ConEd and NYISO. Second, the capacity on the new transmission line between PJM and Linden's existing 345 kV line is 300 MW. This is the same amount of capacity that Linden proposes to add to its 345 kV line. Therefore, customers that desire to utilize this project for the transfer of power between the PJM and NYISO systems are limited to the 300 MW of capacity offered by the new transmission line which connects the PJM line to Linden's 345 kV line. Accordingly, given these features, the Commission finds that the instant proposal is comparable to other merchant transmission proposals where the Commission authorized negotiated rates.

²⁴ See *Cross-Sound Cable Co., LLC*, 108 FERC ¶ 61,277 at P 8 (2004).

²⁵ See, e.g., *Montana Alberta Tie, Ltd.*, 116 FERC ¶ 61,071 at P 24 (2006) and *Sea Breeze Pacific Juan de Fuca Cable, LP*, 112 FERC ¶ 61,295 at P 21 (2005).

47. Moreover, Linden recognizes that the flow of electrons cannot be traced, but it has, nonetheless, developed procedures to ensure that capacity on the existing 345 kV line associated with the QF plant is treated distinctly from the capacity associated with the VFT facilities, as set forth in the Shared Facilities Agreement between Linden and Linden Venture. Further, Linden agrees that the increased capacity created in the New York portion of the 345 kV line will be governed by the NYISO OATT and that it will abide by the operating procedures and OATT for PJM. These commitments by Linden provide safeguards to ensure that the incremental capacity is properly segregated from existing capacity. Therefore, we authorize Linden to charge negotiated rates for transmission rights on the VFT project.

The Commission orders:

(A) The Commission hereby authorizes Linden to charge negotiated rates for service on its merchant transmission project, the VFT project, as discussed in the body of this order.

(B) The Commission accepts Linden's "Report on Open Season."

(C) The Commission grants Linden's request for waiver of the provisions of Subparts B and C of Part 35 of the Commission's regulations, with the exception of sections 35.12(a), 35.13(b), 35.15, and 35.16, for good cause shown as discussed in the body of this order.

(D) The Commission grants Linden's request for waiver of the Form 1 filing requirements, as discussed in the body of this order.

(E) Linden's request for waiver of the 60-day notice requirement is denied as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose
Secretary